

## REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### **I. Status of the claims**

Claims 1-69, 80, 85-86, 92 and 94-99 were previously canceled without disclaimer or prejudice thereof.

Claims 70, 73, 87, 90 and 91 are currently being amended. Claims 70 and 87 are amended to omit reference to a “first space” and to instead recite a “joint space without compartments” and a “separation medium, which fills this joint space entirely.” Claim 73, 90 and 91 are amended to omit reference to a “first space” and to instead recite a “joint space.” The amendments add no new matter and support can be found throughout the specification, for example in originally filed claim 70, and in paragraphs [0133], [0137] and Figure 1 of U.S. Publication No. 2005/0130317. Originally filed claim 70 describes a “joint space” containing a separation medium through which a multiplicity of samples migrate. Figure 1 shows the joint space (2) as a hollow, 3-dimensional space for receiving separation medium (*see also* paragraph [0132], describing the space of Figure 1 as a hollow space for receiving separation medium). No compartments or dividers are shown in the Figure. Paragraph [0133] describes this space as an “analytic space” which receives separation medium. Paragraph [0137] describes that samples migrate through the separation medium in the joint space.

As the amendments add no new matter, entry and examination of the amended claims is respectfully requested.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 70-79, 81-84, 87-91 and 93 are now pending in this application.

## **II. Claim rejection – 35 U.S.C. § 102**

### **A. Hayashizaki et al.**

Claims 70-72, 74-79, 81-84, 87-91 and 93 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,120,667 to Hayashizaki (“Hayashizaki”) for the reasons set forth in the Office Action dated 11-24-09. Applicants respectfully traverse this ground for rejection.

Specifically, the Office Action asserts that “each of the separation capillaries of Hayashizaki ... comprises a ‘first space’ that is filled with separation media,” and that “[t]he capillaries extend in three dimensions to contain separation media.” Office Action dated 11-24-09 at page 3. Therefore, the Office Action concludes that the teaching of Hayashizaki anticipates the present claims. Applicants respectfully disagree with the Examiner’s analysis and conclusion.

As summarized by the Examiner, Hayashizaki describes a method and device for the simultaneous separation of samples, wherein each sample is separated within a first space (the capillaries), with each capillary extending in three dimensions and containing separation medium. *See* Office Action dated 11-24-09 at page 3.

The claims have been amended to omit reference to a “first space,” and to instead recite a “joint space without compartments.” As detailed in claims 70 and 87, the present claims describe methods and devices for the simultaneous parallel separation and detection of a multiplicity of samples within a joint space without compartments. The joint space extends across all three spatial coordinates and is entirely filled with separation medium. Thus, the separation medium within the joint space is permeable in any direction and samples that migrate through the separation medium of the joint space are not constrained by compartments, such as

capillaries. Such a configuration is supported by the specification, for example, at paragraphs [0132], [0133] and [0137] of U.S. Publication No. 2005/0130317, describing the joint space as a 3-dimensional, analytical space entirely filled with a separation medium, and that the samples migrate through the medium contained within this joint space.

Hayashizaki does not disclose or suggest a joint space without compartments that is entirely filled with separation medium through which a plurality of samples migrate. Because Hayashizaki's space requires compartmentalization by capillaries, Hayashizaki does not anticipate the pending claims. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

**B. Wierzbowski et al.**

Claims 70-72, 74-79, 81,-84, 87 and 98-91 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Publication No. 2002/0168643 ("Wierzbowski") for reasons presented in the Office Action dated 11-24-09. Applicants respectfully traverse this ground for rejection.

Specifically, the Office Action asserts that "each of the sample wells of Wierzbowski comprises a 'first space' that is filled with separation media," and that "the wells extend in three dimensions and contain separation media." Office Action dated 11-24-09 at page 4. Therefore, the Office Action concludes that the teachings of Wierzbowski anticipate the present claims. Applicants respectfully disagree with the Examiner's analysis and conclusion.

As explained above, the claims have been amended to omit reference to a "first space" and instead recite a "joint space without compartments." The joint space of the amended claims is entirely filled with separation medium, which is permeable in any direction. The joint space is not constrained by compartments, such as wells, and all samples migrate through, and are separated for analysis in the joint space.

Wierzbowski does not disclose or suggest a joint space without compartments that is entirely filled with separation medium, through which a plurality of samples migrates. Because Wierzbowski's space requires compartmentalization by wells, Wierzbowski does not anticipate the present claims. Accordingly reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) is respectfully requested.

**C. Desrosiers et al.**

Claims 70-76, 78, 82-84, 87-91 and 93 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,410,332 ("Desrosiers") for reasons presented in the Office Action dated 11-24-09. Applicants respectfully traverse this ground for rejection.

Specifically, the Office Action asserts that the sorbent traps (245) of Desrosiers provide a first space that extends in three dimensions and contains separation media. Therefore, the Office Action concludes that the teachings of Desrosiers anticipate the present claims. Office Action dated 11-24-09 at page 5. Applicants respectfully disagree with the Examiner's analysis and conclusion.

As explained for both Hayashizaki and Wierzbowski, the claims have been amended to omit reference to a "first space" and to recite a "joint space without compartments." The joint space of the present claims is entirely filled with a separation medium, which is permeable in any direction. The joint space is not constrained by compartments, such as capillaries, wells or traps, and all samples migrate through and are separated together in the joint space.

Desrosiers does not teach or suggest a joint space without compartments (such as wells or traps) that is entirely filled with separation medium, through which a plurality of samples migrates. Because Desrosiers requires a compartmentalized space, Desrosiers does not anticipate the pending claims. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) is respectfully requested.

**III. Conclusion**

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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